in the

Supreme Court

of the

United States

OCTOBER TERM 1977

NO. 77-360

LOUIS ROTONDO,

Petitioner.

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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NO._____

LOUIS ROTONDO,
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vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, LOUIS ROTONDO, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on June 22, 1977.

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix A hereto, *infra* (pp. A 1 - 7), is reported at 554 F.2d. 712 (5th Cir., 1977).

JURISDICTION

The judgment of the Court of Appeals was entered on June 22, 1977, Appendix A, *infra* (pp. A 1 - 7). A timely petition for rehearing and rehearing in banc was denied on August 8, 1977, Appendix B, *infra* (p. A - 8). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the witness was deprived of his defense to the civil contempt proceeding when he made a particularized and specified claim of the illegal electronic surveillance which triggered the Government's response of disclaimer of use and the trial court refused to conduct an *in camera* inspection of the interception papers supporting said surveillance.

2. Whether the Government's application for a disclosure order pursuant to 18 U.S.C. 2517(5) must be submitted to a court of competent jurisdiction by oath or affirmation.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitutional provision involved in this case is:

United States Constitution — Amendment IV

The following listed statutes are involved in this case.

18 U.S.C. §3504
28 U.S.C. §1826
18 U.S.C. §2517
18 U.S.C. §2518 (1)

These provisions are set forth in Appendix C annexed hereto.

STATEMENT OF FACTS

In February of 1977, the Petitioner was subpoenaed before a Federal Grand Jury sitting in the Southern District of Florida. On that occasion he refused to testify, relying on his Fifth Amendment privilege against self-incrimination. On March 7, 1977, the Petitioner was brought before the Honorable C. Clyde Atkins, United States District Judge for the Southern District of Florida, who conferred use — derivative use immunity upon the Petitioner by virtue of 18 U.S.C. §6002. On March 23, 1977, the witness appeared before the Grand Jury and again refused to testify repeating his Fifth Amendment privilege and additionally stating that the investigation was based upon illegal electronic surveillance in violation of 18 U.S.C. §§2510, et seq.

Thereafter, on April 6, 1977, the Government moved to have the Petitioner adjudged in civil contempt as a recalcitrant witness, pursuant to 28 U.S.C. §1826. The Petitioner filed a written response to the contempt motion.

On April 9, 1977, a hearing was conducted before the Honorable Joe Eaton, United States District Judge for the Southern District of Florida, for the Petitioner to show just cause for his refusal to testify before the Grand Jury.

The Petitioner averred before the trial court that the questions asked of him before the Grand Jury were the product of illegal electronic surveillance conducted in the State of New York, on or about February 13 and May 5, 1976. In support of this assertion, the Petitioner produced two inventories that were provided to him revealing the surveillance aforesaid and the fact that his conversations were intercepted. The Petitioner further related that by reason of a prior appearance before a New York Grand Jury, and his appearance before the Grand Jury at bar, that the questions asked of him before both Grand Juries concerned the expenditures of funds by one Anthony Salerno since the year 1959. The Petitioner, without contradiction, established that the New York electronic surveillance was accomplished by surreptitious breaking and entering certain premises to install electronic transmitters and to intercept conversations occurring on said premises.

The Government responded to the Petitioner's claim of unlawful electronic surveillance by stating that the source of the questions asked of the Petitioner were wire taps secured by Court authorization which were subsequently deemed lawful by the Honorable C. Clyde Atkins in United States of America v. Sklaroff, et al., case number 74-267. Counsel for the Government filed an affidavit with the trial court to

the effect that all questions asked of the Petitioner were derived only from the Sklaroff interception and from no other electronic interception. Counsel further swore that he personally with the participation of the case agent of the Federal Bureau of Investigation formulated the questions asked of the Petitioner and only the court authorized interception was utilized in formulating these questions. In effect, the Government disclaimed use of the New York surveillance as a basis of the questions asked of the Petitioner before the Grand Jury.

At the conclusion of the civil contempt hearing Judge Eaton held that the Government's response asserting a disclaimer of use was sufficient under 18 U.S.C. §3504 and therefore held that the witness did not show just cause as to why he should not be held in civil contempt and thereafter ordered the Petitioner confined for the life of the Grand Jury or until he was willing to testify. Judge Eaton stayed his order of confinement and allowed the Petitioner to remain free during the pendency of his appeal to the United States Court of Appeal for the Fifth Circuit upon the posting of a $10,000.00 personal recognizance bond.

REASONS FOR GRANTING THE WRIT

I. In *Gelbard v. United States*, 408 U.S. 41, 92 S.Ct. 2357, 33 L.Ed.2d. 179 (1972) this Court established that a Grand Jury witness, in defending against a civil contempt proceeding, could show "just cause" for his refusal to testify before the Grand Jury by invoking the prohibition of 18 U.S.C. §2515. This Court relied upon 18 U.S.C. §3504 for the statutory vehicle by which a claim of unlawful electronic surveillance could be called to the trial court's attention. Although these principles were announced by this

Court in 1972, the Court has not spoke of the duties and obligations which arise from a claim made pursuant to this section. The instant case presents a classic factual example which would give this Court an opportunity to set to rest the confusion that has arisen in the trial and appellate courts in the Federal system concerning a witness's claim, the Government's response, and the trial court's disposition of matters arising under 18 U.S.C. §3504.

The essence of the argument advanced by the Petitioner and vigorously contested by the Government below was the propriety of the proceeding surrounding the Petitioner's claim pursuant to 18 U.S.C. §3504. The Petitioner made a particularized and specific claim of illegal electronic surveillance pursuant to §3504 and the Government's response thereto merely disclaimed use of this surveillance without affirming or denying its existence, although it is apparent that a disclaimer of use affirms the existence of said surveillance without admitting or denying its legality. The Petitioner requested that the trial judge make an *in camera* determination as to the facial validity of the documents supporting the alleged illegal electronic surveillance. The trial judge failed to do so, relying instead upon the Government's disclaimer of use. Based on these facts the subsequent implementation of a §3504 claim is squarely presented for decision which the lower court failed to do.

The Court of Appeal's decision was based upon its erroneous belief that the Petitioner requested an evidentiary hearing before the trial court (See Appendix A, p. 5).

This initial premise put the cart before the horse. It is obvious that there cannot be tainted evidence until there is an initial determination of legality. In the instant cause,

without a determination of the legality of the New York surveillance, no evidentiary hearing was requested or necessary. If the trial judge had made an *in camera* determination of the facial validity of the documents and determined that said documents were valid, any further inquiry would have been foreclosed. If the trial judge ruled that such papers were facially invalid, thereby rendering the evidence obtained therefrom illegal, *then and only then*, would there have been a need for an evidentiary hearing to determine taint. A two-pronged test arises from this analysis. First, the trial judge, based upon a claim of the witness and response of the Government, must decide if there was electronic surveillance and whether it was legal. Secondly, if the surveillance was illegal an evidentiary hearing must be conducted to determine whether the Government's questions were a product of or tainted by said surveillance. The Court of Appeal's opinion completely ignored the first prong of this test and in so doing the decision misinterpreted the pertinent statute (18 U.S.C. §3504) which was not mentioned in the opinion and the body of law that has developed in this area.

Most of the litigation surrounding §3504 has centered upon the adequacy of a witness's claim and the Government's response. *United States v. Alter*, 482 F.2d. 1016 (9th Cir., 1973); *United States v. Stevens*, 510 F.2d. 1101 (5th Cir., 1975); *In Re Lochiatto*, 497 F.2d. 803 (1st Cir., 1974); *In Re Buscaglia*, 518 F.2d. 77 (2nd Cir., 1975); *In Re Horn*, 458 F.2d. 468 (3rd Cir., 1972); *In Re Quinn*, 525 F.2d. 222 (1st Cir., 1975); *United States v. Vielguth*, 502 F.2d. 1257 (9th Cir., 1974); and *In Re Persico*, 491 F.2d. 1156 (2nd Cir., 1974). The instant case presents not only questions of the adequacy of the witness's claim and the Government's response but additionally the duties of the trial judge in acting on said claims and responses.

Although the Court of Appeal's decision greatly misconceives the witness' position the opinion likewise runs afoul of the body of jurisprudence which uniformly stands for the proposition that the Government is not allowed to make ex parte determinations in the Fourth Amendment context. *Alderman v. United States*, 394 U.S. 219, 89 S.Ct. 961, 22 L.Ed.2d. 176 (1969). This principle is best evidenced by the Fifth Circuit's decision in *United States v. Fox*, 455 F.2d. 131 (5th Cir., 1972), wherein the Fifth Circuit was presented with facts which showed that the Government was in possession of illegally obtained evidence which they claimed was not to be used in the prosecution of the case. Out of an abundance of caution, the Government presented this evidence to the trial judge who found that even if the evidence were illegal it would have "no arguable relevance" to the proceedings before it. The Fifth Circuit held that the "no arguable relevance" finding was insufficient to vindicate the Defendant's Fourth Amendment rights as explained in *Alderman*. Certainly, the "no arguable relevance" finding is analogous to the disclaimer of use advanced by the Government herein and is likewise insufficient to protect the witness' claim of a Fourth Amendment violation. The statement in the Fifth Circuit Court's opinion, to-wit "There was no evidence to the contrary of that produced by the Government and no reason to believe otherwise.", (Appendix A, p.7), surely violated the principles announced in *Alderman* and *Fox*.

In the Fifth Amendment context a similar assertion of the disclaimer of use by the Government was rejected by the Court in *United States v. Nemes*, ____F.2d. ____ (2nd Cir., 1977), wherein the Court held that a disclaimer of use does not preclude the possibility that some tainted evidence leaked into the Government's possession without knowledge of the person making the disclaimer of use and

that further inquiry was necessary to protect the Defendant's Fifth Amendment rights.

If the opinion of the Fifth Circuit is permitted to stand then a Grand Jury witness, who is able to point with particularity to electronic surveillance by which he was overheard, can be denied his statutory rights under §3504 by a mere ex parte determination by the Government that the surveillance is not being used in formulating the questions asked of the witness. This will occur without there being any determination as to the legality of the surveillance. This result circumvents the clear purpose of §3504. This case can clarify existing case law and can resolve future situations in a very simple manner with due regard for the Defendant's rights under §3504 and the efficient functioning of the Grand Jury. If the Government were to properly affirm the existence of the New York electronic surveillance, which in effect it has already done by its disclaimer of use, all that need be done is for the trial judge to make an in camera inspection of the facial validity of the documents supporting the New York surveillance. If this surveillance is determined to be legal all further inquiry is foreclosed. Only if there is a determination of facial illegality does it become necessary to give the witness an opportunity to show that in some fashion the questions asked of him were linked or tainted by the illegal surveillance. If he fails in this endeavor, then he must answer or be held in contempt.

II. The Petitioner asserted that the application for an order of disclosure of evidence of crimes other than those named in the original interception order pursuant to 18 U.S.C. §2517(5) should have been submitted to the court by oath or affirmation. The opinion of the Court of Appeals noted that "there is no requirement in the subsection requir-

ing oath or affirmation.'(Appendix A, p. 7). This finding is facially correct, however, the Petitioner submits that there is an abundance of authority suggesting that underlying policy considerations and interpretation of the Wire Tap Act *as a whole* require said affirmation or oath.

The Senate of the United States in its report in connection with the new Federal Criminal Code contained in S.R. 1437, 95th Cong., 1st Sess., May 2, 1977, page 197, observed that an application for disclosure of evidence obtained by interception for crimes other than those named in the original intercept order "shall be made in accordance with §3102 . . . " Section 3102 governs original applications to intercept orders which mandate that said applications be made under oath or affirmation.

In the report of the Committee of the Judiciary of the United States Senate to accompany S. 1, 94th Cong., 2nd Sess., Report No. 94-00, April 1, 1976, page 967, the observation is made that "when a law enforcement officer engaged in the authorized interception of a private oral communication intercepts a private oral communication that relates to an offense other than one specified in the order, he may make an application under section 3102 for an order approving the unrelated interception as soon as practicable after the unrelated interception occurs." (3104) Again, §3102 refers to the initial application to intercept oral or wire communications which must be submitted under oath or affirmation. In addition, Title 9, United States Attorney's Manual, Criminal Division, Chapter 7, page 80-82 dealing with electronic surveillance suggests that an application for a disclosure order pursuant to 18 U.S.C. 2517(5) must be submitted under affirmation or oath.

The American Bar Association Standards relating to electronic surveillance, §5.6 states in pertinent part:

> "The use or disclosure of facts contained in an overheard or recorded communication relating to an offense other than the offense under investigation should be permitted where an application for an order of approval is duly made as provided in 5.3 which includes an additional showing that the overhearing or recording was or could have been otherwise authorized."

Section 5.3 referred to above sets out the well recognized principles governing an original application to intercept, which must be submitted under affirmation or oath.

It is readily apparent that although the subsection itself does not contain a specific mandate that the application be submitted under oath or affirmation all supportive reports, studies and commentaries, reflect that an application under §2517(5) must be submitted as if it were an original application to intercept with the additional findings as required by the subsection. It is clear that any "application" especially one that deals with evidence obtained of a nature not originally authorized, must be submitted under oath or affirmation, although not specifically mandated in the subsection.

Congress enacted §2517(5) to overcome the problem encountered when agents conducting a lawful wire tap overhear incriminating conversations relating to offenses other than those named in the interception order. Thus, §2517(5) serves to supplement the interception order and permits the use of the interception of unnamed offenses or evidence derived therefrom only upon subsequent applica-

tion and order. If the original application to intercept and subsequent application for extensions must be made under affirmation or oath, so then must subsequent applications for disclosure of interception conversations or evidence derived therefrom as to crimes not named in the original interception order if this provision is to comply with the Fourth Amendment.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a writ of certiorari should be granted by this Court.

Respectfully submitted,

JAMES J. HOGAN
and
JOSEPH MINCBERG
Attorneys for Petitioner
950 South Miami Avenue
Miami, Florida 33130
Phone: (305) 377-8291

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari was mailed, postage prepaid, to the Solicitor General, Department of Justice, Washington, D.C. this _____ day of _____, 1977.

_____

Appendix

APPENDIX A

In re GRAND JURY PROCEEDINGS.

UNITED STATES of America,

Appellee,

v.

Louis ROTUNDO, Appellant.

No. 77-1900

Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

June 22, 1977.

Defendant appealed from an order of the United States District Court for the Southern District of Florida, Joe Eaton, J., holding him in contempt of court for refusing to testify before a grand jury which was investigating illegal gambling operations. The Court of Appeals held that: (1) an acting United States attorney was authorized to request the grant of use immunity for a grand jury witness; (2) the district court was not required to hold an evidentiary hearing to determine whether questions propounded to defendant before the grand jury were tainted by an electronic surveillance, absent evidence contravening the government's

* Rule 18, 5 cir.; *see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir. 1970, 431 F.2d 409, Part I.

denial of any such taint, and (3) the government's application to use the contents of wire interceptions relating to offenses other than those specified in the intercept order was sufficient.

Affirmed.

1. Witnesses —304(1)

Acting United States attorney was authorized to request grant of use immunity for grand jury witness where United States attorney specifically designated him in writing to perform functions and duties of United States attorney during his absence. 18 U.S.C.A. §§ 6002, 6003.

2. Grand Jury —36

Absent evidence contravening government's denial that any information from an electronic surveillance was used in connection with questions propounded to witness before grand jury, there was no requirement that district court hold evidentiary hearing to permit witness to show taint from that electronic surveillance before holding him in contempt for refusing to testify before grand jury.

3. Grand Jury —36

Government's application to use contents of wire interceptions relating to offenses other than those specified in intercept order was sufficient and was made as soon as practicable under circumstances of case and thus questions to grand jury witness resulting from that surveillance were not illegal. 18 U.S.C.A. § 2517(5).

4. Telecommunications —496

Application to use contents of wire interceptions relating to offenses other than those specified in intercept order did not have to be supported by oath or affirmation. 18 U.S.C.A. § 2517(5)

Appeal from the United States District Court for the Southern District of Florida.

Before AINSWORTH, MORGAN and GEE, Circuit Judges.

PER CURIAM:

This is an appeal from an order of the district court adjudging appellant Louis Joseph Rotundo in contempt of court for refusing to testify before a grand jury which was investigating illegal gambling operations. Rotundo's recalcitrance occurred despite his having been granted use immunity by the district court pursuant to the written motion signed by the Acting United States Attorney. We have examined all of the assertions of error asserted by appellant and find them to be without merit. Accordingly, the judgment holding appellant in contempt of court is affirmed.

[1] Rotundo challenges the authority of the Acting United States Attorney to request the grant of use immunity upon him as a witness. He contends that the United States Attorney alone may lawfully make such a motion on behalf of the Government. However, the United States Attorney specifically designated his Chief Assistant, Mr. Antle, in writing to perform the functions and duties of the

United States Attorney during his absence pursuant to 28 C.F.R. sec. 0.131.[1] In our view, this was adequate to comply with 18 U.S.C. sec. 6003[2] pertaining to a motion to order an individual to give testimony despite his privilege against self-incrimination upon the grant of immunity as provided

[1]28 C.F.R. sec. 0.131, reads as follows:

> Each U.S. Attorney is authorized to designate any Assistant U.S. Attorney in his office to perform the functions and duties of the U.S. Attorney during his absence from office, and to sign all necessary documents and papers as Acting U.S. Attorney while performing such functions and duties.

[2]18 U.S.C. sec. 6003, provides:

> (a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a court of the United States or a grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, in accordance with subsection (b) of this section, upon the request of the United States Attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.
>
> (b) A United States attorney may, with the approval of the Attorney General, the Deputy Attorney General, or any designated Assistant Attorney General, request an order under subsection (a) of this section when in his judgment—
>
> (1) the testimony or other information from such individual may be necessary to the public interest; and
>
> (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

by 18 U.S.C. sec. 6002.[3] See *United States v. Smith*, 10 Cir. 1976, 532 F.2d 158 which approved the designation of an Acting Assistant United States Attorney to perform the functions and duties of the United States Attorney as specifically authorized by 28 C.F.R. sec. 0.131.

[2] Appellant further asserts as error the failure of the trial court to grant an evidentiary hearing to permit him to show taint from a New York electronic surveillance. It is clear from the record that neither the prosecutor nor the FBI Agent assisting him had any prior knowledge of the New York interceptions and that they had just been informed thereof before hearing of this contempt proceeding. The Government's counsel (Mr. Steinberg) specifically denied in open court that any information from the New York surveillance was used in connection with questions propounded to Rotundo before the grand jury. It was stipulated that Mr. Heist, the FBI Agent assisting the prosecutor, would similarly testify. An affidavit by Mr. Steinberg, Special Attorney for the United States in charge

[3]18 U.S.C. sec. 6002, provides in pertinent part as follows:

> Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to—
>
> (1) a court or grand jury of the United States,
>
> * * *
>
> and the person presiding over the proceeding communicates to the witness an order issued under this part, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

of the investigation concerning Rotundo, to the same effect was filed in the record herein. The affidavit averred that the only electronic surveillance used by the Government was that referred to in the case of *United States v. Sklaroff* which was not connected with the New York surveillance. Lawfulness of that intercept has recently been affirmed by us in *United States v. Sklaroff*, (5 Cir. decided May 27, 1977) 552 F.2d 1156. There was no evidence to the contrary of that produced by the Government and no reason to believe otherwise. *See In re: Lochiatto*, 1 Cir. 1974, 497 F.2d 803; *In re: Millow*, 2 Cir. 1976, 529 F.2d 770. Thus, the assertion of error is without merit, there being no need for an evidentiary hearing under the circumstances.

[3, 4] It is further charged that the trial court erred and failed to hold that the government's application for disclosure under 18 U.S.C. sec. 2517(5) was insufficient and that being true the questions to the witness Rotundo before the grand jury were illegal.[4] Thus, appellant contends that he asserted "a complete defense" to the contempt proceeding. We have examined the Government's application to use the contents of wire interceptions relating to offenses other than those specified in the intercept order as well as the order of Judge King granting the Government's

[4]18 U.S.C. sec. 2517(5), reads as follows:

> When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

motion for disclosure. In our view, there has been sufficient compliance with the requirements of 18 U.S.C. sec. 2517(5). We reject, therefore, the contention that the disclosure was insufficient. Read with the Government's application Judge King's order is ample. Nor is the Government's application defective for failure to be supported by oath and affirmation. There is no requirement in the subsection requiring an oath or affirmation. We are also satisfied that the application was made "as soon as practicable" under the circumstances of this case.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
August 8, 1977

EDWARD W. WADSWORTH
CLERK

TEL 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA. 70130

TO ALL PARTIES LISTED BELOW:
NO. 77-1900 — IN RE: GRAND JURY PROCEEDINGS

U.S.A. v. LOUIS ROTUNDO [SIC]

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing**, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
EDWARD W. WADSWORTH,
Clerk
By /s/ Brenda M. Hauck
Deputy Clerk

**on behalf of appellant, Louis Rotundo, [sic]

cc: Mr. James J. Hogan
Mr. Marty Steinberg

APPENDIX C

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 18, U.S.C. §2517, provides in pertinent part:

> (1) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.
>
> (2) Any investigative or law enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire or oral communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of his official duties.
>
> (3) Any person who has received, by any means authorized by this chapter, any information con-

cerning a wire or oral communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the United States or of any state or political subdivision thereof.

* * *

(5) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized herein, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of competent jurisdiction where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

Title 18, U.S.C. §2518(1), provides in pertinent part:

> Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application.

Title 18, U.S.C. §3504, provides:

> (a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States —
>
> (1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;
>
> (2) disclosure of information for a determination of evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and
>
> (3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.
>
> (b) As used in this section "unlawful act" means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

Title 28, U.S.C. §1826, provides:

> (a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of —
>
> (1) the court proceeding, or
>
> (2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.
>
> (b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.